

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Revision Petition No. 98/2025

1. Nirmala Sharma D/o Shri Dhulilal, R/o House No. 5-K-5, Tapovan, Mahaveer Nagar-Iii, Kota Rajasthan
2. Pradyumn Sharma S/o Shri Dhulilal, R/o House No. 5-K-5, Tapovan, Mahaveer Nagar-Iii, Kota Rajasthan
3. Mridula Sharma D/o Shri Dhulilal, R/o House No. 5-K-5, Tapovan, Mahaveer Nagar-Iii, Kota Rajasthan

-----Petitioners

Versus

1. Gobarilal S/o Shri Bardha, Aged About 65 Years, R/o Chahincha, Tehsil Indragarh, District Bundi, Rajasthan
2. Kajodi Lal S/o Shri Bardha, Aged About 63 Years, R/o Chahincha, Tehsil Indragarh, District Bundi, Rajasthan
3. Kedar Lal S/o Shri Bardha, Aged About 59 Years, R/o Chahincha, Tehsil Indragarh, District Bundi, Rajasthan
4. Rampal S/o Shri Bardha, Aged About 65 Years, R/o Chahincha, Presently Residing At Holi Ka Khunt, Chhota Bazar, Bundi, Raj.
5. Kesar Bai Widow Of Shri Bardha, Aged About 95 Years, R/o Chahincha, Tehsil Indragarh, District Bundi, Rajasthan (Deleted 18.02.2025)
6. Dinesh Kumar S/o Shri Dhulilal, R/o House No. 5-K-5, Tapovan, Mahaveer Nagar-Iii, Kota Rajasthan (Abated Deleted 18.02.2025)
7. Mahendra Kumar S/o Shri Dhulilal, R/o House No. 5-K-5, Tapovan, Mahaveer Nagar-Iii, Kota Rajasthan (Since Deceased) Through Lrs.
- 7/1. Sushila Sharma Widow Of Mahendra Kumar, Aged About 70 Years, R/o 4-J-29, Mahaveer Nagar-Iii, Kota, (Deleted 18.02.2025)
- 7/2. Yogesh Sharma S/o Mahendra Kumar Sharma, Aged About 48 Years, R/o 4-J-29, Mahaveer Nagar-Iii, Kota, (Ex-Parte 18.01.2025)
- 7/3. Rohit Sharma S/o Mahendra Kumar Sharma, Aged About 45 Years, R/o 4-J-29, Mahaveer Nagar-Iii, Kota, District Kota, Rajasthan (Ex-Parte 18.01.2025)

8. The Sub-Registrar, Indragarh, Tehsil Indragarh, District Bundi, Rajasthan
9. State Of Rajasthan, Through Tehsildar Sahab, Indragarh, District Bundi, Rajasthan

----Respondents

For Petitioner(s) : Mr. Shailesh Prakash Sharma with
Mr. Avi Sharma and Mr. Manan
Sharma

For Respondent(s) :

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

07/04/2025

1. Aggrieved from dismissal of application under Order VII Rule 11 of CPC on 28.02.2025 in Civil Suit No.06/2020 passed by learned Civil Judge, Indragarh, District Bundi, instant revision petition is preferred by petitioners-defendants.
2. Learned counsel for petitioners-defendants submits that as per facts averment in plaint, agreement in question was executed by Ramkali, who expired on 23.08.2011 and at the time of execution of agreement, her husband Dhulilal was not alive, who also expired on 21.02.1992 whereas suit was filed on 04.08.2020. He submits that the content of agreement indicates that the husband of Ramkali was alive on date of execution of agreement. He also submits that at the time of filing of civil suit, Bardha (father of plaintiffs), in whose favour agreement was executed, was expired. He further submits that civil suit was filed against defendant No.1 (Dinesh), who also not alive on date of filing of civil suit.

3. Learned counsel for petitioners further submits that the suit is hopelessly barred by limitation, but the Trial Court has not considered the ground of limitation on its own. He further submits that neither of the plaintiffs nor any of the defendants were parties to the agreement allegedly executed in 1986, therefore, no cause of action whatsoever has arose either in favour of plaintiffs or against the defendants. He further placed reliance upon judgment in cases of **R. Kandasamy (Since Dead) & Ors. Vs. T.R.K. Sarawathy & Anr.:2024 INSC 884; Daliben Valjibhai & Ors. Vs. Prajapati Kodarbhai Kachrabhai & Anr. 2024 INSC 1049** and **Fatehji & Company & Anr. Vs. L.M. Nagpal & Ors. (2015) 8 SCC 390** and submits that before proceeding to decide the main issues, the duty lies upon the Trial Court to decide the objection regarding limitation, jurisdiction and cause of action. He further submits that he offers to withdraw the instant revision petition with request that the Trial Court may be directed to frame issues on the basis of the pleadings of the parties and decide the legal issues before resorting to evidence in the matter.

4. Considered the submission of learned counsel for petitioner and perused the judgment in case of **R.Kandasamy (Since Dead) & Ors. T.R.K. Sarawathy (supra) and Daliben Valjibhai & Ors. Prajapati Kodarbhai Kachrabhai (supra) and Fatehji & Company & Anr. Vs. L.M. Nagpal & Ors. (supra).**

5. The Trial Court has dismissed the application under Order VII Rule 11 of CPC, which was primarily filed on the ground that one of the defendants was not alive on date of filing of suit, this defect was cured during pendency of civil suit. Otherwise also, if there is

a defect in filing any civil suit or in cause title or in arraying any of the parties then same is curable defect and an opportunity is required to be provided to the plaintiff, before rejecting suit.

6. As regard to question of limitation is concerned, the Trial Court is duty bound to consider the limitation at the time of filing of civil suit. Similarly, if there is any ground which indicates that the civil suit does not disclose a cause of action then again the Trial Court is duty bound to consider the same.

7. Order VII Rule 11 (a) and (d) CPC provides for rejection of civil suit on the ground that the plaint does not disclosed a cause of action and same is barred by law which includes law of limitation.

8. In case, if any such objection has not been raised in Order VII Rule 11 CPC before the Trial Court but pleadings are complete then the option lies under Order XIV Rule 2 CPC to consider legal issues as preliminary issues, as directed by larger Bench of Hon'ble Supreme Court in case of **Nusli Neville Wadia Vs. Ivory Properties AIR 2019 SC 5125** and followed in case of **M/s Mongia Realty and Buildwell Private Limited Vs. Manik Sethi (2022) 3 Scale 270**.

9. Having considered the provision of Order XIV Rule 2 CPC, the Trial Court is duty bound to consider legal issues framed on the basis of pleadings of the parties and decide legal issues which pertains to law of limitation, bar of jurisdiction and competency of jurisdiction, as preliminary issues.

10. Having considered the legal position, the instant revision petition is dismissed as withdrawn with direction to the Trial Court to frame issues and if it finds that some of the issues are purely

legal in nature and decided as primary issues as mandated under Order XIV Rule 2 CPC then without resorting to record the evidence of the parties, the Trial Court shall first decide the legal issues as preliminary issue.

11. As aforesaid, the instant revision petition stands disposed of.

12. Misc. application, if any, stands disposed of.

(ASHOK KUMAR JAIN),J